

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

May 11, 2021

Paul Johnson  
Chairperson, ANC 4C07

**Re: Questions re Requirements for Development Policy**

Chairperson Johnson:

You asked us what requirements an Advisory Neighborhood Commission (“ANC”) must follow in order to adopt a policy on how it will evaluate matters involving development. This letter explains those requirements.

Some of those requirements are procedural. When an ANC adopts a policy, it takes official action.<sup>1</sup> Under the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)<sup>2</sup> and the District of Columbia Home Rule Act,<sup>3</sup> any official action the ANC takes must be taken in a meeting that is open to the public.<sup>4</sup> The ANC must give notice of that meeting “to each Commissioner and residents of the Commission area no less than 7 days prior to the date of such meeting,” unless an “emergency or . . . other good cause” warrants shorter notice.<sup>5</sup> When the

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<sup>1</sup> See, e.g., Letter to Comm’r Miller, Apr. 17, 1996, at 1, available at <http://app.occ.dc.gov/documents/1996/apr/19960417.pdf> (all websites last visited May 11, 2021) (“official action” includes “adopting the minutes of a previous meeting, a treasurer’s report, a quarterly financial report, or written recommendations regarding a proposed District government action”); *Kane v. Dist. of Columbia*, 180 A.3d 1073, 1081 (D.C. 2018) (“official action” is a “formal action having some legal or dispositive effect,” akin to a “resolution, rule, act, [or] regulation”) (quoting D.C. Official Code § 1-207.42(a)).

<sup>2</sup> Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

<sup>3</sup> Approved Dec. 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

<sup>4</sup> See ANC Act § 14(g) (D.C. Official Code § 1-309.11(g)); Home Rule Act § 742(a) (D.C. Official Code § 1-207.42(a)); Letter to Gottlieb Simon, July 21, 2017, at 3, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-July-21-2017-Open-Meetings-Question.pdf> (“any meeting in which an ANC takes official action must be open, and any meeting in which personnel or legal matters are not discussed must be open”).

<sup>5</sup> D.C. Official Code § 1-309.11(c). Notice must be given by at least 2 of the following:

- (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
- (2) Publication in a city or community newspaper;
- (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and
- (4) In any other manner approved by the Commission.


*Id.* § 1-309.11(c)(1)-(4).

meeting date arrives, a quorum of Commissioners must be physically (or, if the meeting is during a public health emergency, virtually) present.<sup>6</sup> The meeting must be conducted in a manner consistent with the ANC Act, as well as with the ANC's bylaws and (to the extent applicable) Robert's Rules of Order.<sup>7</sup> Moreover, since the ANC will have taken official action in this meeting, the ANC must make and keep a "written transcript or a transcription" for that meeting.<sup>8</sup> As we explained in a 2015 letter,<sup>9</sup> this requirement may be satisfied by a full transcript of the meeting, but may also be satisfied by, for example, a video recording of it.<sup>10</sup> This transcript or transcription must be "made available to the public during normal business hours of the District government," and copies of it must be "made available, upon request, to the public at reasonable cost."<sup>11</sup>

The policy itself must also be lawful. It must be consistent with District law, the ANC's bylaws and (to the extent applicable) Robert's Rules. For example, the policy cannot include any solicitation of funds without specific Council authorization, since the ANC Act prohibits such solicitation "regardless of the source or who is to receive the funds."<sup>12</sup> Another example is that the policy must be consistent with District ethics law.<sup>13</sup> We are happy to answer any further questions you have about the legal limits an ANC policy must follow, although any ethics questions should be directed to the Board of Government Ethics and Accountability.

Sincerely,

KARL A. RACINE  
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By:   
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(AL-21-230)

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<sup>6</sup> See *id.* § 1-309.11(b)(1) (quorum requirement); Coronavirus Support Emergency Amendment Act of 2021, § 905(d)(2), effective Mar. 17, 2021 (D.C. Act 24-30; 68 DCR 3101) (authorizing virtual meetings during the current public health emergency). If the policy is being adopted at an ANC monthly meeting, the ANC must also give advance notice of the draft agenda. See D.C. Official Code § 1-309.11(c-1).

<sup>7</sup> See *id.* § 1-309.11(e)(3) ("Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order").

<sup>8</sup> *Id.* § 1-207.42(b).

<sup>9</sup> See Letter to Gottlieb Simon, Aug. 10, 2015, available at <https://oag.dc.gov/sites/default/files/2021-04/ANC-%20Applicability%20of%20Home%20Rule%20Open%20Meetings%20Provision%20to%20ANCs.pdf>.

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> D.C. Official Code § 1-207.42(b).

<sup>12</sup> Letter to Comm'r Brannum, Aug. 17, 2005, at 3, available at <http://app.occ.dc.gov/documents/2005/20050817.pdf> (discussing D.C. Official Code § 1-309.10(l)).

<sup>13</sup> See Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective Apr. 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*); 3 DCMR Ch. 57 and 58.